

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

GWEN STANFORD

Claimant

VS.

WESLEY MEDICAL CENTER

Respondent

AND

HCA OF KANSAS, INC.

Insurance Carrier

AND

WORKERS COMPENSATION FUND

Docket No. 201,956

ORDER

Claimant requests review of the Preliminary Hearing Order of Administrative Law Judge Nelsonna Potts Barnes entered in this proceeding on August 1, 1995.

ISSUES

The Administrative Law Judge denied claimant's request for benefits finding claimant failed to prove that she had given timely notice of accident as required by K.S.A. 44-520.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record and considering the briefs of the parties, the Appeals Board finds and concludes for purposes of preliminary hearing as follows:

Claimant has not established timely notice of accident pursuant to K.S.A. 44-520.

Claimant alleges injury to her left hand at work on February 1, 1995. She reported this accident to her employer in writing on March 24, 1995. Claimant initially testified that she reported the incident on approximately February 1, but later testified that she first verbally informed the respondent approximately three (3) weeks before completing the written accident report. Claimant testified that the first verbal notice of accident was made to Rita Irsik, the health nurse for respondent.

Rita Irsik testified she first talked to claimant concerning her left arm injury approximately two (2) weeks or ten (10) days before receiving, on March 27, 1995, the written report form of March 24, 1995. Claimant's supervisor, Twila Huehl, testified she first became aware of claimant's left arm injury on March 24, 1995, when she completed her portion of the incident report. Claimant offered the testimony of a co-worker, April Seymore, who testified she was with

claimant when claimant reported her injury to Rita Irsik. She thought the conversation took place in mid-February, but she was quite vague and uncertain about the date.

The Appeals Board finds that notice of accident was not given within ten (10) days of February 1, 1995. The evidence does not establish, nor does claimant seem to allege the existence of just cause to explain her failure to give notice of accident within ten (10) days so as to extend her time for giving notice under the statute. Instead, claimant alleges aggravation each and every day worked after the February 1, 1995 injury. Claimant argues that the date of accident should, therefore, be found to be the last day claimant worked prior to her surgery. The Appeals Board finds that both the claimant's testimony and the medical records and reports in evidence indicate a single traumatic injury on February 1, 1995. Although claimant's symptoms persisted, there does not appear to have been a significant aggravation or worsening such that a new accident or injury can be found to have occurred subsequent to February 1, 1995. Claimant had not carried her burden of proof in this regard. Therefore, the findings and conclusions of the Administrative Law Judge should be affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Nelsonna Potts Barnes dated August 1, 1995 should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of October, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Tamara J. Pistotnik, Wichita, Kansas
Vaughn Burkholder, Wichita, Kansas
Kenley J. Thompson, Arkansas City, Kansas
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director